

No. PD-1213-20

STATE OF TEXAS,

Plaintiff

Vs.

BOBBY CARL LENNOX,

Defendant

IN THE TEXAS

COURT OF

CRIMINAL APPEALS

FILED
COURT OF CRIMINAL APPEALS
1/13/2021
DEANA WILLIAMSON, CLERK

APPELLANT'S MOTION FOR REASONABLE BAIL

Appellant, Bobby Carl Lennox (Lennox), requests that this Court set a reasonable appeal bond, pending resolution of the petition for discretionary review of his conviction.

A. Introduction

1. Bobby Carl Lennox (Lennox) was the Defendant, Appellant, and now Respondent. The State of Texas was the Plaintiff, Appellee, and now Petitioner.

2. Lennox was convicted of three counts of forgery of a financial instrument, in violation of Texas Penal Code section 32.21, with a habitual offender finding for each. (CR 91,94,97). The trial court sentenced Lennox to three 17 year sentences to run concurrent. (CR 91,94,97)(RR 3:238). Lennox has been serving that sentence, since his conviction in July of 2019, in the Texas Department of Criminal Justice, Institutional Division.

3. On November 23, 2020, the Sixth Court of Appeals in Texarkana reversed Lennox's three felony convictions and remanded the case for sentencing on three class B misdemeanor convictions. *See Lennox v. State*, No. 06-19-0164-CR (Tex. App.—Texarkana Nov. 23, 2020, pet. filed). The State has filed a petition for

discretionary review with this Court on December 18, 2020.

B. Argument and Authorities

4. Texas Code of Criminal Procedure Art. 44.04(h), entitled *Release Upon Judgment*, provides:

If a conviction is reversed by a decision of a Court of Appeals, the defendant, if in custody, is entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of an appeal by the state or the defendant on a motion for discretionary review. If the defendant requests bail before a petition for discretionary review has been filed, the Court of Appeals shall determine the amount of bail. If the defendant requests bail after a petition for discretionary review has been filed, the Court of Criminal Appeals shall determine the amount of bail. The sureties on the bail must be approved by the court where the trial was had. The defendant's right to release under this subsection attaches immediately on the issuance of the Court of Appeals' final ruling as defined by Tex. Cr. App. R. 209(c).

Lennox's conviction was reversed by the court of appeals on November 23, 2020. *See Lennox v. State*, No. 06-19-0164-CR (Tex. App.—Texarkana Nov. 23, 2020, pet. filed).

Thus, Lennox is entitled to reasonable bail pending filing and/or resolution of a petition for discretionary review.

5. When determining the amount of bail on appeal, the trial court should consider such things as: (1) length of sentence, (2) nature of the offense, (3) work record, family ties and length of residency, (4) ability to make bail, (5) prior criminal history, (6) conformity with previous bail conditions, (7) other outstanding bonds, and (8) aggravating factors involved in the offense. *Ex parte Rubac*, 611 S.W.2d 848, 849-850 (Tex. Crim. App. 1981). Additionally, the trial court may impose appropriate conditions. *See Estrada v. State*, 594 S.W.2d 445, 447-448 (Tex. Crim. App. 1980).

6. Lennox's background is as follows:

(1) Length of Sentence. In this case, Lennox was found guilty of three counts

of forgery of a financial instrument on July 18, 2019. The trial court imposed three 17 year sentences, all of which were to run concurrently.

(2) Nature of Offense. Lennox was convicted of three counts of forgery of a financial instrument, a state jail felony with a repeat offender enhancement.

(3) Work Record, Family Ties and Length of Residency. Lennox was employed full time with J & N Enterprises from 3/30/09 to 5/5/2012 and was responsible for post press, quality control, deliveries, HVAC and building maintenance. Lennox was employed full time with DNP Contractors from 5/12/2014 to 6/5/2017 and was responsible for refrigeration services and operations for Walmart and Brookshires in northeast Texas, as well as commercial and residential air conditioning. Lennox was employed full time with Quick Track from 6/18/17 to 7/18/19 and was responsible for all maintenance of HVAC and commercial refrigeration and small jobs. Lennox's sisters, Diana Kay Davis, and Deborah Gay Leanox, and mother, Rachel Cornelius, live in Blossom, Lamar County, Texas. Lennox has two daughters that live in Deport, Lamar County, Texas and Lennox lived in Deport, Texas from 2014 to 2019.

(4) Ability to Make Bail. Lennox has limited personal property, consisting of furniture, a washer, dryer, stove, home computer, (3) t.v.s and tools (air compressor, welder, tile cutter, HVAC tools, cordless tools).

(5) Prior Criminal History. Lennox was convicted and served time for (3) prior felonies, sentenced 4 years, 7 years and 2 years: served from 2000 - 2001, 2002 to 2009 and 2012 to 2014.

(6) Conformity with Previous Bail Conditions. Lennox has always upheld

his commitment to a bond and bond company.

(7) Other Outstanding Bonds. Currently, Lennox has no other outstanding bonds.

(8) Aggravating Factors Involved in the Offense. There were no children, weapons, or other aggravating factors involved in these offenses.

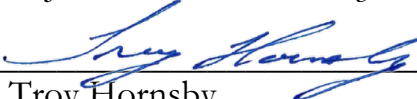
7. Lennox was originally convicted and sentenced to three state jail felonies with repeat offender enhancements resulting in three concurrent 17 year sentences. (CR 91,94,97). However, the convictions were modified to be class B misdemeanors. *See Lennox v. State*, No. 06-19-0164-CR (Tex. App.—Texarkana Nov. 23, 2020, pet. filed). Accordingly, Lennox now faces a punishment range of up to 180 days. *See* Tex. Pen. Code § 12.22. Lennox began his sentence in July of 2019. (CR 91,94,97). Therefore, if the judgment of the Court of Appeals stands, Lennox has already served sufficient time to complete any sentence.

C. Prayer

8. For these reasons, Appellant asks this Court to set reasonable appeal bail pending resolution of the petition for discretionary review filed by the State, and for such other and further relief to which Lennox may be entitled.

Respectfully Submitted,

Miller, James, Miller & Hornsby, L.L.P.

By: 
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Attorney for Appellant
Bobby Carl Lennox

CERTIFICATE OF SERVICE

This is to certify pursuant to Texas Rule of Appellate Procedure 9.5(a) that on January 11, 2021, I served a true and correct copy of the foregoing electronically filed document on the party or attorney on file with the electronic filing manager and that the electronic transmission was reported as complete.

Additionally, pursuant to Texas Rule of Appellate Procedure 9.5(b), a true and correct copy of the above and foregoing document has also been forwarded by the U.S. Mail or by email (as indicated) on all interested parties listed below:

Appellant

Bobby Carl Lennox
TDC #02276422
Alred Hughes Unit
Infirmary
Route 2, Box 4400
Gatesville, Texas 76597

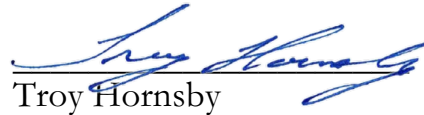

Troy Hornsby

Exhibit A

Affidavit of Bobby Carl Lennox

NO. 06-19-00164-CR

BOBBY CARL LENNOX,	§	IN THE SIXTH DISTRICT
<i>Appellant</i>	§	
	§	
VS.	§	COURT OF APPEALS
	§	
THE STATE OF TEXAS,	§	
<i>Appellee</i>	§	OF THE STATE OF TEXAS

AFFIDAVIT OF BOBBY CARL LENNOX

STATE OF TEXAS §
 §
COUNTY OF BOWIE §

Comes the affiant, Bobby Carl Lennox, and after having been duly sworn and based upon his personal knowledge and information, states as follows:

My name is Bobby Carl Lennox. I am the Appellant in this case. I am of sound mind, I am over the age of 18, except for prior felony convictions, I am not in any way disqualified from making this affidavit, I am capable of making this affidavit, and personally acquainted with the facts herein stated.

(1) Length of Sentence. In this case, I was found guilty of three counts of forgery of a financial instrument on July 18, 2019. The trial court imposed three 17 year sentences, all of which were to run concurrently.

(2) Nature of Offense. I was convicted of forgery of a financial instrument, a state jail felony with a repeat offender enhancement.

(3) Work Record, Family Ties and Length of Residency. I was employed full time with J & N Enterprises from 3/30/09 to 5/5/2012; I was responsible for post press, quality control, deliveries, HVAC and building maintenance. I was employed full time with DNP Contractors from 5/12/2014 to 6/5/2017; I was responsible for refrigeration services and operations for Walmart and Brookshires in northeast Texas, as well as commercial and residential air conditioning. I was a subcontractor working for Quick Track from 6/18/17 to 7/18/19; I was responsible for all maintenance of HVAC and commercial refrigeration and small jobs. My sisters, Diana Kay Davis, and Deborah Gay Leanox, and mother, Rachel Cornelius, live in Blossom, Lamar County, Texas. I have two daughters, that live in Deport, Lamar County, Texas and I lived in Deport, Texas from 2014 to 2019.

(4) Ability to Make Bail. I have limited personal property, consisting of furniture, washer, dryer, stove, home computer, (3) t.v.s and tools (air compressor, welder, tile cutter, HVAC tools, cordless tools).

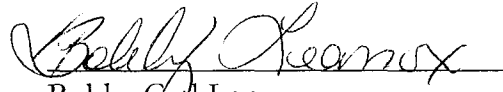
(5) Prior Criminal History. I was convicted and served time for (3) prior felonies, sentenced 4 years, 7 years and 2 years: served from 2000 - 2001, 2002 to 2009 and 2012 to 2014.

(6) Conformity with Previous Bail Conditions. I have always upheld my commitment to a bond and bond company.

(7) Other Outstanding Bonds. Currently, I have no other outstanding bonds.

(8) Aggravating Factors Involved in the Offense. There were no children, weapons, or other aggravating factors involved in these offenses.

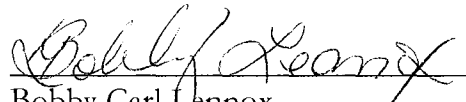
WITNESSED THE HAND of the affiant this 25 day March, 2020.


Bobby Carl Lennox

UNSWORN DECLARATION
(Pursuant to Texas Rule of Appellate Procedure 73.1
& Texas Civil Practice and Remedies Code §132)

I, Bobby Carl Lennox, inmate number 02276422, being presently incarcerated in the Alfred Hughes Unit, in Coryell County, Texas, declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on March 25, 2020.


Bobby Carl Lennox

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Rowena Cearley on behalf of Troy Hornsby
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Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Gary Young		gyoung@co.lamar.tx.us	1/11/2021 10:27:26 AM	SENT

Associated Case Party: BOBBY CARL LENNOX A/K/A BOBBY CARL LEANOX

Name	BarNumber	Email	TimestampSubmitted	Status
Troy Hornsby		troy.hornsby@gmail.com	1/11/2021 10:27:26 AM	SENT